

AMENDED IN SENATE APRIL 14, 1998

SENATE BILL

No. 1900

Introduced by Senator Schiff
(Coauthor: Senator Haynes)

February 19, 1998

An act to amend ~~Section 1170.1~~ of Sections 1170, 1170.1, 1170.13, and 1170.15 of, and to repeal Section 1170.95 of, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1900, as amended, Schiff. Sentencing.

(1) Under existing law, the subordinate term for each consecutive offense of which a defendant is convicted is $\frac{1}{3}$ of the middle term of imprisonment prescribed, excluding any specific enhancements. The subordinate term for violent felonies includes $\frac{1}{3}$ of the term prescribed for any applicable specific enhancements.

This bill would include in a sentence $\frac{1}{3}$ of the term imposed for all specific enhancements applicable to any subordinate offense, whether or not a violent felony.

(2) Existing law limits the total of subordinate terms for offenses that are not violent felonies to 5 years, except as otherwise provided by law.

This bill would delete that limitation *and make additional conforming changes*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 1170 of the Penal Code is*
2 *amended to read:*

3 1170. (a) (1) The Legislature finds and declares that
4 the purpose of imprisonment for crime is punishment.
5 This purpose is best served by terms proportionate to the
6 seriousness of the offense with provision for uniformity in
7 the sentences of offenders committing the same offense
8 under similar circumstances. The Legislature further
9 finds and declares that the elimination of disparity and
10 the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in
12 proportion to the seriousness of the offense as determined
13 by the Legislature to be imposed by the court with
14 specified discretion.

15 (2) Paragraph (1) shall not be construed to preclude
16 programs, including educational programs, that are
17 designed to rehabilitate nonviolent, first-time felony
18 offenders. The Legislature encourages the development
19 of policies and programs designed to educate and
20 rehabilitate nonviolent, first-time felony offenders
21 consistent with the purpose of imprisonment.

22 (3) In any case in which the punishment prescribed by
23 statute for a person convicted of a public offense is a term
24 of imprisonment in the state prison of any specification of
25 three time periods, the court shall sentence the
26 defendant to one of the terms of imprisonment specified
27 unless the convicted person is given any other disposition
28 provided by law, including a fine, jail, probation, or the
29 suspension of imposition or execution of sentence or is
30 sentenced pursuant to subdivision (b) of Section 1168
31 because he or she had committed his or her crime prior
32 to July 1, 1977. In sentencing the convicted person, the
33 court shall apply the sentencing rules of the Judicial
34 Council. The court, unless it determines that there are
35 circumstances in mitigation of the punishment
36 prescribed, shall also impose any other term ~~which~~ *that*
37 it is required by law to impose as an additional term.
38 Nothing in this article shall affect any provision of law

1 ~~which~~ *that* imposes the death penalty, ~~which~~ *that*
2 authorizes or restricts the granting of probation or
3 suspending the execution or imposition of sentence, or
4 expressly provides for imprisonment in the state prison
5 for life. In any case in which the amount of
6 preimprisonment credit under Section 2900.5 or any
7 other provision of law is equal to or exceeds any sentence
8 imposed pursuant to this chapter, the entire sentence,
9 including any period of parole under Section 3000, shall
10 be deemed to have been served and the defendant shall
11 not be actually delivered to the custody of the Director
12 of Corrections. However, that sentence shall be deemed
13 a separate prior prison term under Section 667.5, and a
14 copy of the judgment and other necessary documentation
15 shall be forwarded to the Director of Corrections.

16 (b) When a judgment of imprisonment is to be
17 imposed and the statute specifies three possible terms,
18 the court shall order imposition of the middle term, unless
19 there are circumstances in aggravation or mitigation of
20 the crime. At least four days prior to the time set for
21 imposition of judgment, either party or the victim, or the
22 family of the victim if the victim is deceased, may submit
23 a statement in aggravation or mitigation to dispute facts
24 in the record or the probation officer's report, or to
25 present additional facts. In determining whether there
26 are circumstances that justify imposition of the upper or
27 lower term, the court may consider the record in the case,
28 the probation officer's report, other reports including
29 reports received pursuant to Section 1203.03 and
30 statements in aggravation or mitigation submitted by the
31 prosecution, the defendant, or the victim, or the family of
32 the victim if the victim is deceased, and any further
33 evidence introduced at the sentencing hearing. The
34 court shall set forth on the record the facts and reasons for
35 imposing the upper or lower term. The court may not
36 impose an upper term by using the fact of any
37 enhancement upon which sentence is imposed ~~under~~
38 ~~Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or~~
39 ~~12022.7, or~~ under any ~~other~~ provision of law. A term of

1 imprisonment shall not be specified if imposition of
2 sentence is suspended.

3 (c) The court shall state the reasons for its sentence
4 choice on the record at the time of sentencing. The court
5 shall also inform the defendant that as part of the
6 sentence after expiration of the term he or she may be on
7 parole for a period as provided in Section 3000.

8 (d) When a defendant subject to this section or
9 subdivision (b) of Section 1168 has been sentenced to be
10 imprisoned in the state prison and has been committed to
11 the custody of the Director of Corrections, the court may,
12 within 120 days of the date of commitment on its own
13 motion, or at any time upon the recommendation of the
14 Director of Corrections or the Board of Prison Terms,
15 recall the sentence and commitment previously ordered
16 and resentence the defendant in the same manner as if
17 he or she had not previously been sentenced, provided
18 the new sentence, if any, is no greater than the initial
19 sentence. The resentence under this subdivision shall
20 apply the sentencing rules of the Judicial Council so as to
21 eliminate disparity of sentences and to promote
22 uniformity of sentencing. Credit shall be given for time
23 served.

24 (e) (1) Notwithstanding any other law and consistent
25 with paragraph (1) of subdivision (a) of Section 1170, if
26 the Director of Corrections or the Board of Prison Terms
27 or both determine that a prisoner satisfies the criteria set
28 forth in paragraph (2), the director or the board may
29 recommend to the court that the prisoner's sentence be
30 recalled.

31 (2) The court shall have the discretion to resentence
32 or recall if the court finds both of the following:

33 (A) The prisoner is terminally ill with an incurable
34 condition caused by an illness or disease that would
35 produce death within six months, as determined by a
36 physician employed by the department.

37 (B) The conditions under which the prisoner would be
38 released or receive treatment do not pose a threat to
39 public safety.



1 The Board of Prison Terms shall make findings
2 pursuant to this subdivision before making a
3 recommendation for resentence or recall to the court.
4 This subdivision does not apply to a prisoner sentenced to
5 death or a term of life without the possibility of parole.

6 (3) Within 10 days of receipt of a positive
7 recommendation by the director or the board, the court
8 shall hold a hearing to consider whether the prisoner's
9 sentence should be recalled.

10 (4) The prisoner or his or her family member or
11 designee may request consideration for recall and
12 resentencing by contacting the chief medical officer at
13 the prison or the Director of Corrections. Upon receipt of
14 the request, if the director determines that the prisoner
15 satisfies the criteria set forth in paragraph (2), the
16 director or board may recommend to the court that the
17 prisoner's sentence be recalled. The director shall submit
18 a recommendation for release within 30 days in the case
19 of inmates sentenced to determinate terms and, in the
20 case of inmates sentenced to indeterminate terms, the
21 director may make a recommendation to the Board of
22 Prison Terms with respect to the inmates who have
23 applied under this section. The board shall consider this
24 information and make an independent judgment
25 pursuant to paragraph (2) and make findings related
26 thereto before rejecting the request or making a
27 recommendation to the court. This action shall be taken
28 at the next lawfully noticed board meeting.

29 (5) Any recommendation for recall submitted to the
30 court by the Director of Corrections or the Board of
31 Prison Terms shall include one or more medical
32 evaluations, a postrelease plan, and findings pursuant to
33 paragraph (2).

34 (6) If possible, the matter shall be heard before the
35 same judge of the court who sentenced the prisoner.

36 (f) Any sentence imposed under this article shall be
37 subject to the provisions of Sections 3000 and 3057 and any
38 other applicable provisions of law.

1 (g) A sentence to state prison for a determinate term
2 for which only one term is specified, is a sentence to state
3 prison under this section.

4 *SEC. 2.* Section 1170.1 of the Penal Code is amended
5 to read:

6 1170.1. (a) Except as provided in subdivisions (b)
7 and (c), and subject to Section 654, when any person is
8 convicted of two or more felonies, whether in the same
9 proceeding or court or in different proceedings or courts,
10 and whether by judgment rendered by the same or by a
11 different court, and a consecutive term of imprisonment
12 is imposed under Sections 669 and 1170, the aggregate
13 term of imprisonment for all these convictions shall be
14 the sum of the principal term, the subordinate term, and
15 any additional term imposed for applicable
16 enhancements for prior convictions, prior prison terms,
17 and Section 12022.1. The principal term shall consist of
18 the greatest term of imprisonment imposed by the court
19 for any of the crimes, including any term imposed for
20 applicable specific enhancements. The subordinate term
21 for each consecutive offense shall consist of one-third of
22 the middle term of imprisonment prescribed for each
23 other felony conviction for which a consecutive term of
24 imprisonment is imposed, and shall include one-third of
25 the term imposed for any specific enhancements
26 applicable to those subordinate offenses.

27 (b) When a consecutive term of imprisonment is
28 imposed under Sections 669 and 1170 for two or more
29 convictions for kidnapping, as defined in Section 207 or
30 208, involving separate victims, the aggregate term shall
31 be calculated as provided in subdivision (a), except that
32 the subordinate term for each—~~subsequent~~ *subordinate*
33 kidnapping conviction shall consist of the full middle
34 term for each kidnapping conviction for which a
35 consecutive term of imprisonment is imposed and shall
36 include the full term imposed for specific enhancements
37 applicable to those subordinate offenses. ~~The total of the~~
38 ~~subordinate terms imposed pursuant to this subdivision~~
39 ~~may exceed five years.~~



1 (c) In the case of any person convicted of one or more
2 felonies committed while the person is confined in a state
3 prison or is subject to reimprisonment for escape from
4 custody and the law either requires the terms to be served
5 consecutively or the court imposes consecutive terms, the
6 term of imprisonment for all the convictions ~~which that~~
7 the person is required to serve consecutively shall
8 commence from the time the person would otherwise
9 have been released from prison. If the new offenses are
10 consecutive with each other, the principal and
11 subordinate terms shall be calculated as provided in
12 subdivision (a), ~~except that the total of subordinate terms~~
13 ~~may exceed five years.~~ This subdivision shall be
14 applicable in cases of convictions of more than one
15 offense in different proceedings, and convictions of more
16 than one offense in the same or different proceedings.

17 (d) When the court imposes a prison sentence for a
18 felony pursuant to Section 1170, the court shall also
19 impose the additional terms provided for any applicable
20 enhancements. The court shall also impose any other
21 additional term that the court determines in its discretion
22 or as required by law shall run consecutive to the term
23 imposed under Section 1170. In considering the
24 imposition of the additional term, the court shall apply
25 the sentencing rules of the Judicial Council.

26 (e) All enhancements shall be alleged in the
27 accusatory pleading and either admitted by the
28 defendant in open court or found to be true by the trier
29 of fact.

30 (f) When two or more enhancements may be imposed
31 for being armed with or using a dangerous or deadly
32 weapon or a firearm in the commission of a single offense,
33 only the greatest of those enhancements shall be imposed
34 for that offense. This subdivision shall not limit the
35 imposition of any other enhancements applicable to that
36 offense, including an enhancement for the infliction of
37 great bodily injury.

38 (g) When two or more enhancements may be imposed
39 for the infliction of great bodily injury in the commission
40 of a single offense, only the greatest of those

1 enhancements shall be imposed for that offense. This
2 subdivision shall not limit the imposition of any other
3 enhancements applicable to that offense, including an
4 enhancement for being armed with or using a dangerous
5 or deadly weapon or a firearm.

6 (h) For any violation of paragraph (2), (3), or (6) of
7 subdivision (a) of Section 261, paragraph (1) or (4) of
8 subdivision (a) of Section 262, Section 264.1, subdivision
9 (b) of Section 288, subdivision (a) of Section 289, or
10 sodomy or oral copulation by force, violence, duress,
11 menace, or fear of immediate and unlawful bodily injury
12 on the victim or another person as provided in Section 286
13 or 288a, the number of enhancements that may be
14 imposed shall not be limited, regardless of whether the
15 enhancements are pursuant to this section, Section 667.6,
16 or some other section of law. Each of the enhancements
17 shall be a full and separately served enhancement and
18 shall not be merged with any term or with any other
19 enhancement.

20 *SEC. 3. Section 1170.13 of the Penal Code is amended*
21 *to read:*

22 1170.13. Notwithstanding subdivision (a) of Section
23 1170.1 which provides for the imposition of a subordinate
24 term for a consecutive offense of one-third of the middle
25 term of imprisonment, if a person is convicted pursuant
26 to subdivision (b) of Section 139, the subordinate term for
27 each consecutive offense shall consist of the full middle
28 term. ~~The total of the subordinate terms imposed~~
29 ~~pursuant to this section may exceed five years.~~

30 *SEC. 4. Section 1170.15 of the Penal Code is amended*
31 *to read:*

32 1170.15. Notwithstanding ~~the provisions of~~
33 subdivision (a) of Section 1170.1 which ~~provide~~ *provides*
34 for the imposition of a subordinate term for a consecutive
35 offense of one-third of the middle term of imprisonment,
36 if a person is convicted of a felony, and of an additional
37 felony ~~which~~ *that* is a violation of Section 136.1 or 137 and
38 ~~which~~ *that* was committed against the victim of, or a
39 witness or potential witness with respect to, or a person
40 who was about to give material information pertaining to,

1 the first felony, or of a felony violation of Section 653f
2 ~~which that~~ was committed to dissuade a witness or
3 potential witness to the first felony, the subordinate term
4 for each consecutive offense ~~which that~~ is a felony
5 described in this section shall consist of the full middle
6 term of imprisonment for the felony for which a
7 consecutive term of imprisonment is imposed, and shall
8 include the full term prescribed for any enhancements
9 imposed ~~pursuant to Section 12022, 12022.5, or 12022.7.~~
10 ~~The total of the subordinate terms imposed pursuant to~~
11 ~~this section may exceed five years for being armed with~~
12 ~~or using a dangerous or deadly weapon or a firearm, or for~~
13 ~~inflicting great bodily injury.~~

14 *SEC. 5. Section 1170.95 of the Penal Code is repealed.*

15 ~~1170.95. (a) Notwithstanding Section 1170.1 relating~~
16 ~~to the maximum total of subordinate terms for~~
17 ~~consecutive offenses that are not "violent felonies," the~~
18 ~~total of the subordinate terms for consecutive offenses~~
19 ~~that are all residential burglaries may exceed five years.~~

20 ~~(b) Notwithstanding Section 1170.1 relating to the~~
21 ~~maximum total of subordinate terms for consecutive~~
22 ~~offenses that are not "violent felonies," the total of the~~
23 ~~subordinate terms for consecutive offenses that are all~~
24 ~~residential robberies may exceed five years.~~

25 ~~(c) Notwithstanding Section 1170.1 relating to the~~
26 ~~maximum total of subordinate terms for consecutive~~
27 ~~offenses that are not "violent felonies," the total of the~~
28 ~~subordinate terms for consecutive offenses that are all~~
29 ~~residential arsons may exceed five years.~~

30 ~~(d) When a subordinate consecutive term of~~
31 ~~imprisonment is imposed pursuant to Sections 669 and~~
32 ~~1170 that involves one or more convictions for robbery~~
33 ~~where it is charged and found that in each of those~~
34 ~~robberies that the defendant personally used a deadly or~~
35 ~~dangerous weapon in the commission of that robbery, as~~
36 ~~provided in subdivision (b) of Section 12022, and each of~~
37 ~~those robberies is not a violent felony, as defined in~~
38 ~~subdivision (c) of Section 667.5, the aggregate term shall~~
39 ~~be calculated as provided in subdivision (a) of Section~~
40 ~~1170.1, except that the subordinate term for each~~

1 subordinate robbery conviction shall consist of one-third
2 of the middle term of imprisonment and one third of the
3 enhancement provided in subdivision (b) of Section
4 12022. Notwithstanding Section 1170.1, the total of the
5 subordinate terms imposed under this subdivision may
6 exceed five years.

7 (e) As used in this section, “residential burglary”
8 means burglary of an inhabited dwelling house, an
9 inhabited floating home as defined in subdivision (d) of
10 Section 18075.55 of the Health and Safety Code, an
11 inhabited trailer coach as defined in Section 635 of the
12 Vehicle Code, or the inhabited portion of any other
13 building.

14 (f) As used in this section, “residential robbery” means
15 a robbery that is perpetrated in an inhabited dwelling
16 house, an inhabited floating home as defined in
17 subdivision (d) of Section 18075.55 of the Health and
18 Safety Code, an inhabited trailer coach as defined in
19 Section 635 of the Vehicle Code, or the inhabited portion
20 of any other building.

21 (g) As used in this section, “residential arson” means
22 arson committed in violation of subdivision (b) of Section
23 451 where it is charged and proved that the defendant
24 intentionally set fire to or burned or caused the burning
25 of a distinct inhabited structure or a distinct inhabited
26 property in the commission of that offense.